

HARVEY HOWARD TROTT

IBLA 83-657

Decided February 23, 1984

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application NM 56327.

Vacated and remanded.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases:  
First-Qualified Applicant

Failure of an applicant to date a simultaneous oil and gas lease application in accordance with 43 CFR 3112.2-1(c) (1982) does not require rejection of the application.

APPEARANCES: Harvey Howard Trott, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Harvey Howard Trott has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated May 2, 1983, rejecting his simultaneous oil and gas lease application NM 56327.

Appellant's lease application was drawn with first priority for parcel NM 142 in the February 1983 drawing. In its May 1983 decision, BLM rejected appellant's application because it was undated and, therefore, did not reflect that it was signed within the filing period, in accordance with 43 CFR 3112.2-1(c) (1982).

In his statement of reasons on appeal, appellant contends that the date of January 10, 1983, shown on the two postal money orders which were submitted as filing fees for four parcels, including parcel 142, is his controlling date for signing, dating, and mailing the application, and further, that the date on those money orders shows that the application was signed and filed within the period allowed.

[1] The applicable regulation, 43 CFR 3112.2-1(c) (1982), provides, in relevant part, with respect to simultaneous oil and gas lease applications: "The application shall be dated at the time of signing. The date shall reflect that the application was signed within the filing period." This Board has consistently required strict compliance with the regulations governing simultaneous oil and gas lease filings, 43 CFR Subpart 3112, in order to protect the rights of the second- and third-drawn applicants. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer

Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). Accordingly, we have held that BLM must reject a simultaneous oil and gas lease application pursuant to 43 CFR 3112.6-1(a) (1982) where the application is not dated in the space provided on the application form. Warren W. Nissley, 73 IBLA 234 (1983); Lynn C. Haas, 62 IBLA 25 (1982).

However, in Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), the Tenth Circuit reversed the Federal District Court's decision in Conway v. Watt, No. C82-0029 (D. Wyo. July 12, 1982), which had affirmed the Board's decision in Joe Conway, 59 IBLA 314 (1981). This Board had held in Conway that failure to date a simultaneous oil and gas lease application required rejection of the application.

The appeals court stated in Conway:

Although offers to lease must strictly comply with the Secretary's regulations, this court has consistently intimated that nonsubstantive errors are inappropriate grounds for finding DEC [drawing entry card] applications defective. Ahrens v. Andrus, [690 F.2d 805 (10th Cir. 1982)] at 808; Winkler v. Andrus, 594 F.2d 775, 777-78 (10th Cir. 1979). \* \* \*

Inasmuch as the great weight of judicial authority places little or no emphasis on a date, Conway's failure to date his DEC would indeed appear to be a de minimis, a nonsubstantive error.

717 F.2d at 516. Thus, the court concluded that although a date could be required, the failure to date could not be a per se disqualification.

Accordingly, under the Conway decision, appellant's failure to date his application must be considered a nonsubstantive error for which automatic rejection of the application would be inappropriate. Billie L. Emrick, 78 IBLA 358 (1984).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case remanded.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Franklin D. Arness  
Administrative Judge  
Alternate Member

